



BULLETIN

THE STATE OF THE COURT

BY NWCC PRESIDING JUDGE
RONALD BROWN

The Unfair Insurance Claims Settlement Practice Act, found at Nebraska R.R.S. §44-1536 et. seq. (Reissue 1998, as supplemented), was enacted by the Unicameral in 1991. It prohibits certain conduct and practices relating to the investigation and settlement of insurance claims, but specifically exempted from its provisions "contracts of workers' compensation". Due to complaints regarding claims practices to State Senators and the Nebraska Workers' Compensation Court, LB 331 was introduced by Senators David Landis and DiAnna Schimek and passed by the Legislature during the past session, to be effective January 1, 2000.

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WORKSHOP!

Covering selected aspects of
Workers' Compensation in
Nebraska

September 17, 1999

Cornhusker Hotel

See insert for more
information!

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LEGISLATIVE UPDATE:

NEW LAWS IMPACT NEBRASKA WORKERS' COMPENSATION ACT

The following is a summary of the bills passed during the last legislative session which relate to the workers' compensation system. The effective date is listed for each bill.

LEGISLATIVE BILL 17 —

This bill prescribes time lines and maximum charges for the release of medical records by providers; however, it expressly provides that such restrictions *do not apply to the release of medical records under the Workers' Compensation Act.*

Effective August 28, 1999

LEGISLATIVE BILL 54 —

This bill provides funding for interpreters.

- **Section 25-2406** is amended to provide that fees and expenses of interpreters shall be paid in accordance with a fee schedule established by the Supreme Court out of the General Fund with funds appropriated to the

Supreme Court for that purpose (rather than payment out of a county fund designated for such purpose).

Effective August 28, 1999

LEGISLATIVE BILL 216 —

This bill changes several sections of the Workers' Compensation Act.

- **Section 48-115** is amended to expand the definitions of coverage for volunteer firefighters, volunteer ambulance drivers, and out-of-hospital emergency care providers. Coverage can now be established if such volunteers are traveling to or are in the performance of activities they have been directed to do by the chief of the fire department or rescue service, or some person authorized to act for the chief. (According to Sen. Vrtiska's Introducer's Statement, this is intended to provide coverage to volunteers injured

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NEW LAWS IMPACT WORKERS' COMPENSATION ACT

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during training, attendance at meetings of the department or mutual aid organizations, and whatever other activities the chief directs.)

In addition, changes have been made under Sections 48-115 and 48-126.01 to address a problem for fire departments that have organized as nonprofit corporations. New wording clarifies that volunteer firefighters and out-of-hospital emergency care providers who are members of a nonprofit corporation shall also receive coverage under the Act.

Finally, structural changes were made to separate out and organize the myriad provisions which comprise Section 48-115. There are now 11 subsections, and the provision requiring that the employment be "in the usual course of the trade, business, profession, or occupation" of the employer now applies to all 11 subsections.

The above provisions of LB 216 became effective May 26, 1999. The remaining provisions of LB 216 below become effective August 28, 1999.

- **Section 48-119** is amended to clarify that the first day of disability is included in the seven-day waiting period, and to provide that a partial day of disability is considered a full calendar day for purposes of the waiting period.
- **Section 48-120** is amended to clarify the circumstances under which an employee is restricted in his or her ability to change physicians. The new wording

provides that restrictions on changing physicians apply so long as the employer has given proper notice to the employee regarding physician selection.

Subsection (6) under Section 48-120 has been changed in response to *Owen v. American Hydraulics, Inc.*, 254 Neb. 685, 578 N.W.2d 57 (1998). New language permits the court on its own motion to submit a dispute

to an independent medical examiner from the court's list of examiners pursuant to Section 48-134.01.

In Subsection (7) under Section 48-120, the definition of physician has been harmonized with the definition under Section 48-151(1).

- **Section 48-120.02** is amended to allow the court to accept an annual statement (rather than requiring actual evidence) from managed care plans that all licensing, certification, or registration requirements for participating providers are current and in good standing.

- **Section 48-121(5)** is amended to clarify that an employee is entitled to compensation while undergoing physical or medical rehabilitation, as well as while undergoing vocational rehabilitation.

- **Section 48-125** is amended to clarify that waiting time penalties under that section apply when there is a failure to pay compensation after 30 days from the entry of a final order, award or judgment of the court. Also, new wording requires that compensation payments be sent directly to the person entitled to compensation or his or her designated representative except as otherwise provided in Section 48-149.

- **Section 48-134.01** has been amended in response to *Owen v. American Hydraulics, Inc.*, 254 Neb. 685, 578 N.W.2d 57 (1998). Under new wording, an IME from the court's list of examiners may now render findings pertaining to causality and relatedness of the medical condition to the employment.

Another minor change in Section 48-134.01 is substitution of the word "physicians" for "health care providers" when referring to those individuals on the list of independent medical examiners.

- **Sections 48-145 and 48-1,114** are amended to change the method and percentage of assessments against self-insured employers for "in-lieu of premium" taxes and for the Compen-

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sation Court Cash Fund. This will change from a method based on prevailing premium rates to one based on prospective-loss costs. Self-insurers will now be assessed 2.5 percent of the prospective-loss costs for the "in-lieu of premium" tax (rather than 2 percent of prevailing premium rate), and 1.25 percent of prospective-loss costs for the Compensation Court Cash Fund (rather than 1 percent of the prevailing premium rate.) These changes are intended to be revenue-neutral. Also, a definition for "prospective-loss costs" has been added under Section 48-151(9).

- **Section 48-156** is amended to harmonize it with the language in Section 48-163 which requires a majority of the judges of the court to adopt rules and regulations (rather than requiring only a majority of the judges constituting a quorum.)
- **Section 48-162.01** is amended to clarify that a vocational rehabilitation counselor chosen or selected pursuant to that section shall *implement* the plan, in addition to evaluating the employee and developing the plan. It also clarifies that the fee for the development and implementation of the plan shall be paid by the employer/insurer.
- **Section 48-163** is amended to eliminate an unnecessary charge to subscribers who wish to receive notice of the court's public hearings.
- **Section 48-166** is amended to provide that the court's annual report shall include "pertinent in-

formation" regarding settlements and awards, rather than the requirement that it state the number and amounts of settlements and awards.

LEGISLATIVE BILL 259 —

- **Section 48-1,113** is amended to change the method of assessing risk management pools from one based on the prevailing premium rate to one based on annual contributions received by the pool less amounts paid for excess or aggregate workers' compensation insurance.

*Effective August 28, 1999***LEGISLATIVE BILL 331 —**

This bill provides additional penalties against employers and prohibits certain practices by insurers, intergovernmental risk management pools and self-insurers.

- **Section 48-145.01** is amended to provide additional penalties for employers who fail to carry workers' compensation insurance or otherwise secure payment of compensation under the Act. Wording has been added to allow the compensation court or the district court to order employers to pay a civil monetary penalty of not more than \$1,000.00 for each violation. Each day of continued failure to secure payment of compensation constitutes a separate violation.
- **Section 48-146.02** is amended to provide additional enforcement if a workers' compensation insurer, intergovernmental risk management pool or self-insurer repeatedly fails to satisfy its ob-

ligations under the Act. If a three-judge panel of the compensation court finds that a workers' compensation insurer has failed to comply with an obligation "with such frequency as to indicate a general business practice to engage in that type of conduct", the review panel may request the Director of Insurance to suspend or revoke the insurer's authorization to write workers' compensation insurance. If a three-judge panel finds that an intergovernmental risk management pool or self-insurer has failed to comply with its obligations "with such frequency as to indicate a general business practice to engage in that type of conduct", the panel may suspend or revoke the approval of such entity to provide workers' compensation coverage. A new subsection (2) under Section 48-146.02 sets forth 12 additional acts or practices which, when committed "with such frequency as to indicate a general business practice to engage in that type of conduct", will subject the insurer, intergovernmental risk management pool or self-insurer to the aforementioned action.

Additionally, a new subsection (3) under Section 48-146.02 gives the compensation court or its designee authority to examine workers' compensation records of an insurer, intergovernmental risk management pool, self-insurer, or an agent of such an entity, to determine compliance with the obligations under the Act.

This bill becomes operative on January 1, 2000 ❖

NWCC WEBSITE REDESIGNED:

MORE INFORMATION AVAILABLE ON COURT WEBSITE REGARDING NEBRASKA WORKERS' COMPENSATION

About a year ago the Nebraska Workers' Compensation Court purchased Microsoft website design software called FrontPage 98. The Public Information Services section of the court has been using this software to redesign the court's Internet website, making it easier to use and navigate through. Hopefully it's a bit more visually appealing as well.

The redesigned website, published on April 1, features an index of the site which "floats" at the top of each page so users can navigate to anywhere in our website no matter where within the site they happen to be. The redesigned website also includes:

- a **home page** (which describes the website's services and includes a disclaimer and court contact information),
- a **"what's new" page** (which includes the latest information regarding workers' compensation in Nebraska, the court, and its website — as well as court press releases and recent issues of *The Bulletin*),
- a **table of contents page**,
- Still under construction by Nebrask@ Online is a **search page** (enabling website users to perform searches for all documents containing matching words or patterns within the website),
- an **"about the court" page** (which describes the court's history, mission, organization and fiscal year accomplishments),
- a **professional staff directory page** (including phone number, address, and e-mail),

- a **"frequently asked questions" (FAQs) page** (regarding workers' compensation in Nebraska),
- a **call sheet page** (including all current court call sheets from Lincoln, Omaha, and around the state),
- a **name and address listing page** (for self insurers, independent medical examiners, certified



managed care plans, and a new downloadable list of private vocational rehabilitation counselors),

- a **court publications and forms page** (including downloadable versions of the Subscription Service pamphlet, Rule Book, Law Book, Rights and Obligations for Employers/Employees pamphlet in English and Spanish, Choice of Doctor pamphlet in English and Spanish, Vocational Rehabilitation Services pamphlet in English and Spanish, Order Form, Record Search Request Form, Form 1—First Report of Alleged Injury or Illness, Form 4—Compensation and Ex-

pense Report, Form 12—Record of Compensation Insurance, Form 50—Choice of Doctor Form in English and Spanish, Form 63-1—Request for Independent Medical Examiner, and Form 67-2—Notice of Agreement To Use A Named Independent Medical Examiner),

- an **electronic data interchange (EDI) page** (which includes the list of current EDI trading partners, a retrospective of the court's progress in implementing EDI, information on how employers/insurers can implement EDI, a description of Detailed Claim Information Codes, and soon to be available is a downloadable trading partner requirements package), and
- a **feedback page** (enabling website users to contact us with questions and comments about the site or about Nebraska workers' compensation in general).

A computer, modem and telephone line are all that are needed to access the court's newly redesigned Internet website at: <http://www.nol.org/workcomp/> ♦

MILEAGE RATE HAS INCREASED

Effective July 1, the mileage reimbursement rate has increased to 31¢ per mile for travel to seek medical treatment or while participating in a vocational rehabilitation plan. This conforms to the reimbursement rate paid to State of Nebraska employees. ♦

NEBRASKA WORKERS' COMPENSATION COURT SURVEY:
"ACCESSING THE COURT"

Please fill out, clip and mail the following survey regarding how you access or communicate with the court. Our address: Nebraska Workers' Compensation Court, P.O. Box 98908, Lincoln NE 68509-8908. By participating in this survey you will help the court to improve its accessibility to the public. Thank you!

What methods do you frequently use to access the court? (Check as many as apply)

- ☐ Information line
- ☐ Direct phone calls to court staff
- ☐ Staff e-mail
- ☐ Court website e-mail
- ☐ U.S. Mail
- ☐ In-person
- ☐ Other (please describe) _____

Please describe how you would like to see the court improve its accessibility: _____

Name: _____

Address: _____

Phone #: _____

E-mail Address: _____

PROPOSED VR & IME ORDERS MAY NOW BE FILED WITH THE COURT VIA E-MAIL TO JUDGES' ASSISTANTS

Proposed orders such as those pertaining to vocational rehabilitation and independent medical examiners now may be submitted electronically to the Nebraska Workers' Compensation Court.

Attorneys may file these orders via e-mail with the appropriate judge's assistant. The court prefers these to be e-mailed because it

saves processing time by court staff. Examples of such proposed orders include:

- order to appoint a vocational rehabilitation counselor
- order granting an independent medical examination

The judges' assistants may also be e-mailed for informal commu-

nications that would otherwise be handled by telephone. Please note that the **original** motion and notice of hearing may **not** be filed via e-mail.

Following is a list of each judge's assistant and the e-mail address to use when filing these proposed orders:

• Barb Frank

Assistant to Judge Brown and Judge High

E-mail Address:

bfrank@wcc.state.ne.us

• Shelia Richards

Assistant to Judge Van Norman and Judge Fitzgerald

E-mail Address:

sheliar@wcc.state.ne.us

• JoAnn Maurer

Assistant to Judge Coe, Judge Cavel and Judge Ramirez

E-mail Address:

jmaurer@wcc.state.ne.us

WORKERS' COMPENSATION COURT Y2K STATEMENT

The Nebraska Workers' Compensation Court has been working on the Y2K issue for a number of years, and we continue to take every prudent and necessary step toward becoming Y2K compliant. However, we refrain from filling out technical/operational surveys or responding to general inquiries about this issue. Frequently, such surveys or inquiries do not adequately or accurately define the technical relationships or dependencies at stake. As is known by anyone who has followed this issue in detail, the Y2K problem is tremendously complex, difficult to define, and even more challenging to solve.

At the same time, the Y2K issue obviously has technical implications that require business partners to understand in detail how information moves between orga-

nizations from an Information Technology perspective. We are committed to helping resolve any questions or concerns about these exchanges. As your organization identifies specific exchange issues/concerns/questions that require the court's response, we will make

every possible effort to address them on an individual basis. Technical, operational, or definitional questions may be directed in writing to Randy Cecrle at (402)471-2976; managerial or administrative questions may be directed to Su Perk Davis at (402)471-6455.❖

REPORTING REQUIREMENTS AMENDED FOR FIRST TREATMENT MEDICAL REPORTS

Section 48-120(3) of the Nebraska Workers' Compensation Act has been amended to eliminate the requirement that a first treatment medical report be furnished to the court. That section now reads "No claim for such medical treatment shall be valid and enforceable unless, within four-

teen days following the first treatment, the physician giving such treatment furnishes the employer a report of such injury and treatment on a form prescribed by the compensation court". According to the court's Rule 33, the current Form HCFA - 1500 shall be used to meet this requirement. ❖

Nebraska Workers' Compensation Court

Educational Seminar Agenda

Time	Event	Presenter
7:30 a.m. – 8:30 a.m.	Continental Breakfast Registration	
8:30 a.m. – 8:45 a.m.	Welcome & Announcements	Su Perk Davis, Public Information Manager, NWCC Ron Brown, Presiding Judge, NWCC
8:45 a.m. – 10:00 a.m.	General Session: (State of the Court, Statute Changes, Rule Changes, Miscellaneous Administrative Issues)	Ron Brown, Presiding Judge, NWCC Glenn Morton, Administrator, NWCC Jackie Dendinger, General Counsel, NWCC
10:00 a.m. – 10:30 a.m.	Break	
10:30 a.m. – 12:00 p.m.	Medical Case Management	Patrick W. Bowman, MD, Nebraska Spine Surgeons Thomas Stine, Attorney, Boucher Law Firm Margaret K. Brockman, R.N., Medical Services Manager, Heartland Comp Ken Briscoe, Claim Supervisor, Sedgwick Claims Management Service, Inc.
	Motion Practice	Michael Cavel, Judge, NWCC Laureen Van Norman, Judge, NWCC Robert Moodie, Attorney, Friedman Law Offices Dallas Jones, Attorney, Baylor, Evnen, et al.
	Unfair Claim Practices	Glenn Morton, Administrator, NWCC Jeff Schumacher, VP-Insurance, Crete Carrier Corporation Christy Neighbors, Counsel, Department of Insurance Joe Grant, Attorney, Gaines, Mullen, et al.
12:00 p.m. – 1:00 p.m.	Lunch	
1:00 p.m. – 2:15 p.m.	Fraud — Dept. of Insurance	Mike Boyd, Division Chief, Insurance Fraud Prevention Division, Dept. of Insurance
	Role of Doctor in Workers' Comp.	Karen K. Phillips, MD, Company Care Carol Kriefels, Claims Specialist, General Casualty Insurance Co. James Coe, Judge, NWCC
	Reporting Obligations & Enforcement	Allen Kassebaum, Compliance Examiner, NWCC Jackie Dendinger, General Counsel, NWCC
2:15 p.m. – 2:30 p.m.	Break	
2:30 p.m. – 3:30 p.m.	Informal Dispute Options: IDR/IME	John W. Iliff, Attorney, Gross & Welch, P.C. William Berlowitz, Attorney, William M. Berlowitz, P.C. Vincent Naimoli, Workers' Compensation Examiner, Drivers Management, Inc. Tara Muir, Attorney, NWCC
	Market Conduct — Dept. of Insurance	Bruce Ramage, Market Conduct Examination Supervisor, Dept. of Insurance Bob Wetzel, Branch Claims Manager, EMC Insurance Companies Jeff Scanlan, Assistant Vice President, Cornhusker Casualty Co. Kris Peterson, Coverage & Claims Manager, NWCC
	Vocational Rehabilitation — ESL, Legal & Cultural . . .	Ben Castinado, Consultant, Castinado & Associates Carolyn Apland, Coordinator of ESL, NECC Lee Loudon, Attorney, Law Firm of Lee S. Loudon Arshi Nisley, ABE Program Coordinator, Central Community College Pam Rose, Claim Examiner, Wausau Insurance Companies Joseph Ramirez, Judge, NWCC
3:30 p.m. – 4:30 p.m.	Workplace Safety — Dept. of Labor	Gary Hirsh, Director, Safety & Labor Standards, Dept. of Labor
	Electronic Communication with the Court	Randy Cecrle, Information Technology Manager, NWCC Bruce Mayfield, Lead Analyst, NWCC Greg Lemmon, Deputy Secretary of State Stephanie Payne, Attorney, NWCC Rod Rehm, Attorney, Rehm Law Firm Michael High, Judge, NWCC
	Vocational Rehabilitation (Continued)	(See 2:30 p.m. session)

THE STATE OF THE COURT

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Like the Unfair Insurance Claims Settlement Practices Act, LB 331 prohibits certain practices by insurers, intergovernmental risk management pools and self-insurers. The legislation provides that administrative personnel of the court, or its designee, such as personnel of the Department of Insurance who regularly initiate market conduct surveys, may examine workers' compensation records of an insurer, risk management pool, self-insurer or third-party administrator to determine compliance with the Nebraska Workers' Compensation Act. Entities which commit prescribed acts "with such frequency as to indicate a general business practice" may, after hearing, be subject to suspension or revocation

of the right to offer insurance, continue group self-insurance pursuant to the Intergovernmental Risk Management Act or continue self-insured status.

Finally, the legislation authorizes the Workers' Compensation Court to adopt and promulgate rules necessary to implement its provisions.

The court will draft regulatory rules for public review and hearing.

Informal dispute resolution has been an evolving process during the past year. All members of the legal staff have completed formal training. We have surveyed the mediation process as offered by several other workers' compensation courts, industrial commissions,

state and federal courts and will soon be making final administrative decisions regarding the use of mediation in our jurisdiction. Serious consideration will be given to mandatory mediation for pro se litigants. Comments regarding your experience with mediation are welcome.

The educational seminar planned for September 17, 1999 will present topics selected by respondents to a survey last year. Presenters and panel members will include senior administrative personnel, judges, physicians and private sector experts. Because seminar content is based on your suggestions, it hopefully will provide information useful to the problematic issues encountered in the workers' compensation system. ❖

SUMMER, 1999

BULLETIN



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